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August 3, 2005

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentations – *Wireline Broadband* Proceeding  
CC Dkt. Nos. 02-33, 98-10, 95-20

Dear Ms. Dortch:

On Tuesday August 2, 2005, Garry Betty, President & CEO, Christopher Putala, Executive Vice President for Public Policy, and David Baker, Vice President for Law and Public Policy, all of EarthLink, Inc., and the undersigned met separately with Chairman Kevin J. Martin and Emily A. Willeford, Special Advisor, Office of Chairman Martin; Commissioner Kathleen Q. Abernathy and Russell Hanser, Acting Legal Advisor, Office of Commissioner Abernathy; Commissioner Michael J. Copps and Jessica Rosenworcel, Legal Advisor to Commissioner Copps; and Commissioner Jonathan S. Adelstein and Scott Bergmann, Legal Advisor to Commissioner Adelstein, regarding the above captioned proceedings.

In the meetings, EarthLink explained that it presently has 5.4 million customers, of which 1.5 million are broadband customers and expressed concern about the potential scope and nature of the proposed FCC action and its possible impact on EarthLink's customers, including the likelihood that consumers may suffer outages, disruptions and/or price shock. EarthLink explained that while it understands the FCC has a goal of parity between cable modem and DSL services, EarthLink's substantial experience with commercial negotiations underscores that the FCC must afford a sufficient time for EarthLink to transition its current arrangements to a market-driven model, consistent with industry practices, expectations and practicalities. EarthLink urged that the FCC adopt a three year transition consistent with the FCC's Line Sharing precedent.<sup>1</sup>

EarthLink further noted its recent experiences negotiating with incumbent local exchange carriers and stressed that, especially with carriers with whom EarthLink has no previous contractual relationship outside of the tariff model, negotiations can be difficult or even

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<sup>1</sup> See 47 C.F.R. § 51.319 (a)(1)(i)(B); 18 FCC Rcd 16,978 at ¶ 264 (noting, *inter alia*, need for adequate time to negotiate new arrangements with incumbent carriers).

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unworkable. As such, EarthLink explained that if the Commission is to effectuate a successful transition to commercial negotiations in lieu of today's tariffed and web-posted services, it should recognize potential obstacles to successful negotiations. Such obstacles could include, for example, refusals to negotiate global services arrangements, such that multiple contracts would be required for each service area or potentially, according to areas defined solely by the carriers, requiring enormous resource and time commitment for negotiations; slow-rolling or delay in negotiations such that adequate progress is not made during the delineated transition period; and carrier refusal to allow services to be used for any lawful purpose in order to confer a competitive benefit to the carrier (e.g., restrictions on the provisions of voice over Internet Protocol ("VoIP") services). EarthLink requested that the FCC underscore its continuing authority to ensure that negotiations are conducted in good faith and state its willingness to afford recourse to ensure successful negotiations and a smooth transition to the new proposed regulatory paradigm.

EarthLink also discussed the potential scope and impact of the proposed FCC action and the need for the FCC to acknowledge the differences between DSL and other "high-speed" services, especially given the potential disruption to millions of customers. EarthLink noted that the competitive landscape for services other than DSL (including services such as T1 access and higher as well as special access services used by competitors that support dial-up services) is even more concentrated and FCC action at this time would pose serious risks to consumer Internet access. EarthLink also discussed the need for regulatory stability for UNE-L arrangements, underscoring the need to ensure that the FCC's actions to re-define services do not undermine EarthLink's current arrangements, as EarthLink has acted in express reliance upon the FCC's pronouncements regarding the going-forward availability of UNEs.

Finally, EarthLink discussed the FCC's Section 214 process and the need for the Commission to ensure, consistent with the statute, that the public convenience and necessity will not be adversely affected by the withdrawal of today's services in any community, 47 U.S.C. § 214(a).

Pursuant to Section 1.1206(b) of the Commission's rules, one copy of this memorandum is being filed electronically in the above-referenced dockets for inclusion in the public record. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,

/s/

Donna N. Lampert  
Counsel for EarthLink, Inc.

CC (VIA EMAIL):  
Chairman Kevin J. Martin  
Commissioner Kathleen Q. Abernathy

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Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Emily A. Willeford  
Russell Hanser  
Jessica Rosenworcel  
Scott Bergmann